UNITED NATIONS

CAT

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Distr.
GENERAL

CAT/C/SR.469
16 May 2001

Original: ENGLISH

COMMITTEE AGAINST TORTURE

Twenty-sixth session

SUMMARY RECORD OF THE FIRST PART (PUBLIC)* OF THE 469th MEETING

Held at the Palais Wilson, Geneva,
on Tuesday, 8 May 2001, at 3 p.m.

Chairman: Mr. BURNS

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* The summary record of the second part (closed) of the meeting appears as document CAT/C/SR.469/Add.1.

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Any corrections to the records of the public meetings of the Committee at this session will be consolidated in a single corrigendum, to be issued shortly after the end of the session.

GE.01-41974 (E)

The meeting was called to order at 3.05 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (agenda item 4) (continued)

Second periodic report of the Czech Republic (continued) (CAT/C/38/Add.1)

1. At the invitation of the Chairman, the delegation of the Czech Republic took places at the Committee table.

2. Mr. SOMOL (Czech Republic) said his country was aware that dialogue would help to solve the numerous problems it faced. The Czech Republic accepted and would respond to outside criticism.

3. Racism and extremist movements had sprung up after the 1989 revolution, when a society unaccustomed to multiculturalism had suddenly been confronted with an influx of refugees and migrants. Educational programmes designed to combat racist thinking had been introduced in schools, the State administration, the army and the police force. The prosecution of racially motivated crimes was difficult, since it was often hard to prove that they had been prompted by racism and judges were sometimes unable to identify racial elements of behaviour. Admittedly, violent criminals received more lenient sentences in the Czech Republic than elsewhere. The police officer involved in the Lacko case had appealed against his sentence, which was under review.

4. The Roma, with a population of between 200,000 and 250,000, formed the smallest minority in the Czech Republic. Since all other minorities in the country shared the values of the majority population, problems arose only in respect of the Roma. The Czech Republic had decided to implement the recommendations of the Committee on the Elimination of Racial Discrimination (CERD), and the ministers concerned would report on that effort by the end of the current year. Cultural differences, social behaviours and the influence of the former communist regime hindered harmonious coexistence between the Roma and the majority population. Furthermore, the Roma suffered not only from housing problems and social exclusion but also from rising unemployment as they lost their traditional jobs to harder-working foreign immigrants.

5. Education of the Roma was the top priority of the Government's integration policy. Roma children received little schooling, as their parents set no store on education. Because the youngsters seldom attended primary school, their parents frequently asked that they should be placed in special secondary schools where the demands made on them were lower. To remedy that situation, 319 special classes had been set up to prepare Roma children for normal schooling and 197 Roma psychological assistants were working in the school system. Psychological tests for children had been altered to take account of cultural and social disparities, and the law had been amended to allow pupils leaving special schools to continue their education at secondary level.

6. A small percentage of the Roma living in the Czech Republic had started to emigrate to countries such as Canada and the United Kingdom, mainly for economic reasons. That trend had been offset by some positive developments, including the establishment of Roma businesses and the incipient participation of the Roma in the political life of the country.

7. The Government's long-term policy sought to integrate the Roma in Czech society by encouraging mutual respect for traditions, history and language. Measures adopted to achieve that goal included the appointment of Roma advisers to 73 local authorities, the launching of an anti-racist campaign, the creation of multicultural housing facilities and a museum of roma culture. An important step had been the signing of a memorandum on cooperation between the Government and representatives of the International Romani Union, which provided for the establishment of a post of adviser and coordinator for Roma affairs in the Czech Ministry of Foreign Affairs who would be responsible for implementation of the memorandum.

8. The enormous social changes which had occurred since 1989 had also had a downside in the form of extremist movements with foreign connections and neo-fascist sympathies. The police had not yet found an efficient method of dealing with skinheads, the group which committed the bulk of racially motivated crimes. Some 307 such crimes had been recorded in 2000; 148 of those cases had already been brought to court and the offenders sentenced. However, realizing that the relevant statutory provisions covering extremist activities needed to be applied with greater rigour, the Government had taken steps to ban or monitor the activities of far-right groups, and the Ministry of the Interior regularly reported on those efforts to the Government. Nevertheless, implementing the law effectively and coming to grips with extremist movements was a difficult, long-term task.

9. In the Czech Republic, victims of torture, cruel, degrading or inhuman treatment or punishment could obtain compensation under the Code of Criminal Procedure, the Code of Civil Procedure, Act No. 82/1998 and Act No. 209/1997. As part of an effort to redress injustices perpetrated in the past by the communist regime, compensation had been awarded to 208,000 former political prisoners.

10. Ms. BURČIKOVÁ (Czech Republic), replying to questions regarding the mistreatment of demonstrators during the meeting of the International Monetary Fund (IMF) in Prague in September 2000, explained that ill-treatment was a criminal offence under the Czech Criminal Code. Allegations of violent behaviour by the police were investigated by the Inspectorate of the Ministry of the Interior, which had looked into four cases arising from the Prague riots. Thus far only one police officer had been subjected to disciplinary measures as a result of those investigations.

11. Many reports of police violence had been submitted to the complaints department of the Police Presidium, which dealt with petty offences committed by the police. Admittedly, the outcome of its investigations was often unsatisfactory, and for that reason an external control mechanism was to be set up. In order to improve conditions in all kinds of detention facilities, including psychiatric hospitals, children's homes and old people's homes, the Government's Council for Human Rights was negotiating the establishment of an independent supervisory body.

12. The rights of detainees to consult a lawyer or a doctor and to inform a third person about their detention needed to be strengthened, because the Police Act guaranteed only the right to inform a third person. The Code of Criminal Procedure stipulated that a detainee could retain counsel only after an official charge had been made, but no legal right existed to do so earlier in proceedings. No legal provision whatsoever had been made for the right to consult a doctor, although in practice detainees were usually allowed to see a physician if they so wished. Unfortunately, the new Police Act had yet to come into force because the Minister of the Interior was not convinced of its necessity.

13. With regard to the overlapping of the powers of the Council for Human Rights and the Ombudsman, she said that Council, which supervised all human rights issues, had been established in 1998. Half its members were State officials and the other half were representatives of civil society and non-governmental organizations (NGOs). The Council had established its own advisory bodies called "expert sections", each of which monitored compliance with a specific United Nations human rights instrument. The sections were also composed of government officials and representatives of NGOs, all of whom were experts in the field covered by the instrument in question. The Council's specific duties included proposing legislative or other measures to enhance the protection of human rights. Such proposals were usually accepted by the Government.

14. The creation of the Office of the Ombudsman, established by law in 1999, had been another important step in the promotion of human rights. A former Minister of Justice had been appointed Ombudsman and he had taken office in January 2001. The Ombudsman's role was to monitor individual actions which might infringe human rights both in civil society and at all levels of the national administration. The Ombudsman was independent and responsible only to the Chamber of Deputies and, unless he resigned, could not be removed before the end of his term except when accused of a criminal offence and prosecution was approved by the Chamber of Deputies; if he no longer met the conditions necessary to be a member of the Senate; or if he assumed another office incompatible with that of Ombudsman. Adequate safeguards existed to ensure the Ombudsman's independence.

15. With regard to severe overcrowding in the prisons she said that the Ministry of Justice had taken measures to remedy the situation, including a meeting with the presidents of the regional courts which had led to a recommendation that judges should weigh carefully any decision to commit a person to pre-trial detention or prison. The Czech Government was committed to reducing the prison population, and overcrowding had dropped to 6 per cent overcapacity in 2000, as compared with 14 per cent overcapacity in 1997. It was also expected that a new law on probation and mediation in force since January 2001 would have a further positive effect.

16. In response to questions relating to article 3 of the Convention, she said that the Criminal Code forbade the expulsion of foreigners if there were reasonable grounds to suspect that they would be subject to torture in the receiving country. If such individuals were found guilty of a crime, any sentence imposed would be served in the Czech Republic. As a result of recommendations made by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) following a visit to the Czech Republic in 1997, measures had been taken to improve the situation of foreign detainees who, until 1997, had been

kept among the general prison population in overcrowded conditions, often without even the possibility of going outside. The 1999 Act on aliens provided for special detention facilities for foreigners and set out the conditions for their detention as well as the rights and duties of detainees and staff. Her Government remained aware of the need to further improve the everyday operations of the detention system for foreigners.

17. Replying to questions from Mr. El Masry, she said that the former system of civil inspections of prisons had not been replaced under the new prison legislation. External controls did, however, exist, and currently both State attorneys and the Ombudsman could deal with matters relating to the treatment of prisoners and their conditions of detention. The Council for Human Rights was also seeking to establish an independent control mechanism to monitor all detention facilities. With regard to visits to persons in pre-trial detention, a concern raised in the 1997 CPT report, she said that the law had been amended in 2000 to allow for more frequent and longer visits; in addition, whereas in the past those detainees who were considered most suspect or dangerous had been allowed visitors only with prior approval in writing from a State attorney or judge, the conditions of their detention were now defined at the outset of the detention period, and written approval was no longer necessary for each visit. Prisoner complaints were normally handled by a prison's complaint department, the prevention and control section of the General Directorate of the Prison Service or the prison authorities at the Ministry of Justice. However, as those bodies were not fully independent, State attorneys and the Ombudsman currently had the right to investigate violations of the law in prisons. She was not aware of any cases of prisoners having been warned by prison staff that if they complained and their complaint was found to be groundless, they could be prosecuted for false accusation. Complaints of coercion or excessive use of force by the police were dealt with by government officials within the Police Presidium, but the Ombudsman could also investigate complaints against the police.

18. Inter-prisoner violence and bullying were also concerns. Bullying was defined as physical or mental violence, degrading treatment or attempts to assert authority over others. Prisoners who were thought to be at risk of injury from other inmates could be isolated in special cells, and during physical examinations the doctors were expected to look for physical signs of violence. She had no statistics on inter-prisoner violence of a specifically sexual nature.

19. In 2000, there had been 5,604 men and 364 women in pre-trial detention and 14,966 men and 605 women in prison serving sentences. Statistics were also available on the number of foreign nationals in pre-trial detention and serving sentences, as well as on the number of young offenders aged 15 to 18 who were considered to have criminal capacity. However, no statistics were kept on the geographical origin or ethnic minority status of prisoners. Owing to a lack of staff there were male guards in female prisons, but body searches always had to be carried out by a guard of the same sex as the prisoner.

20. In response to another concern raised in the CPT report, she said that prisoners were no longer transferred to the police station for questioning; detectives now interviewed them in prison. Prisoners were transferred to the police station only when it was necessary to try and

reconstruct a crime. New training programmes had been established for police and prison guards, covering such topics as methods of handling situations without resorting to violence, the United Nations Code of Conduct for Law Enforcement Officers and major international instruments, including the Convention and its definition of torture.

21. Turning to the issue of pre-trial detention of women, in particular women with children, she referred to the case of a Romanian national who had been arrested for trafficking in women and placed in pre-trial detention when eight months pregnant. She had then given birth in prison and, as there were no facilities for children in the detention centre, the baby had been made a ward of the State, although the mother had been allowed daily visits. The mother had been released a month later, although the case against her was continuing. When sentencing individuals to pre-trail detention judges must take their health into account, although in the most serious cases individuals could be detained regardless of their health situation.

22. With regard to medical care for prisoners, she noted that every prison had a full-time doctor who could recommend the transfer of a prisoner to a hospital, if necessary. Outside the doctor's working hours, non-medical prison staff were authorized to call an ambulance so that detainees or prisoners could receive medical care, which was in conformity with the Code of Conduct for Law Enforcement Officers.

23. In response to a question about the submission of reports to United Nations treaty bodies, she said that since the creation of the Council for Human Rights in 1998, its secretariat had been responsible for preparing such reports, in consultation with NGOs and the administration. The report currently before the Committee might be considered to be unusually critical, but she considered that to be a positive sign.

24. Mr. SOMOL (Czech Republic), replying to questions from Mr. Mavrommatis, noted that the delay in the submission of the report had been partly due to the difficult process of transition to democracy, the number of reports to be prepared and the need to involve so many ministries and institutions. A special human rights department had not been created within the Ministry of Foreign Affairs until 1998, when the Council for Human Rights had also been created.

25. Turning to the issue of stateless persons created by the separation of the Czech Republic and Slovakia, he said that amendments to Act No. 194/1999, on citizenship, had changed the conditions for acquisition of Czech citizenship, thereby solving existing administrative problems. Currently, all former citizens of Czechoslovakia were entitled to become Czech citizens if they were resident in the Czech Republic.

26. With regard to the implementation of articles 4 and 5 of the Convention, he said that article 259 (a) of the Criminal Code dealt with the crime of torture and other inhuman and cruel treatment. However, article 158 of the Code also contained provisions on the crime of abuse of power by a public official, which was frequently cited in cases of misconduct by policemen and prison guards. However, he had no data on any such crimes, or on crimes relating to article 5 of the Convention committed in recent years.

27. Article 10 of the Constitution stated that international human rights treaties were self-executing and directly applicable by the courts, without the need for any specific

implementing legislation, as was required for other international treaties. Both the federal and local authorities were required to implement human rights treaties, and individuals could invoke them in legal proceedings before both ordinary courts and the Constitutional Court.

28. His Government understood article 2 of the Convention as applicable only to public officials or persons acting in an official capacity. Acts of torture and similar treatment by private individuals were punishable under the Criminal Code.

29. The independence of the judiciary was guaranteed by the Constitution, which prohibited any attempt to sway a judge, the forced dismissal or transfer of judges, and the performance by judges of other public functions. It also provided for their appointment by the President for terms with no time limits. Act No. 335/1991, on judges and courts, guaranteed judges protection from unjustified interference in their work, stipulated the material guarantees of their independence and regulated the conditions of their appointment and dismissal. A judge could be dismissed for a serious breach of duty by decision of a disciplinary court on the proposal of the Minister of Justice. Judges were barred by law from practising if they had intentionally committed a crime, if their legal functions were suspended or limited, or if they lost their citizenship.

30. Criminal behaviour by members of the police force was monitored carefully, and extensive reliable statistics were available. For instance, between 1993 and 1997 the number of complaints of police offences had risen by about 10 per cent, well-founded complaints had declined by 25 per cent, and complaints dealt with by other institutions had risen by 60 per cent, although the 1997 totals were well below those of the previous three years. The road police were the object of many of those complaints, the charges being negligence, disregard of rules, or misinterpretation of the law and rules of service. Junior police officers under the age of 30 were more likely to commit offences, generally when off duty. All cases had been dealt with through internal disciplinary procedures. The figures for actual crime committed by police officers were, of course, much lower.

31. Regarding the legal requirement that prisoners should be provided with paid employment while serving a sentence, the Prison Service considered it an important aspect of rehabilitation; unfortunately, few such jobs were available, and only about 45 per cent of prisoners were thus employed. The Government was trying to help by offering prisoners some public contracts.

32. Regarding the case of the journalist allegedly prosecuted under the Press Act, the journalist in question had been accused by the police of cooperating with the local mafia and had been charged with the crimes of false accusation and defamation as defined in the Criminal Code. He was currently being tried on those grounds.

33. Mr. MAVROMMATIS, observed that the delegation seemed to have a very clear understanding of the purposes of the dialogue with the Committee. Candid replies had been given regarding the Roma along with good explanations of a number of promising measures for dealing with what was not a short-term problem. The Committee had been told that the incidents of racism involved primarily skinheads, and that statelessness was often a factor. On the other hand, the approach taken to the excessive use of force by the police during the demonstrations against the IMF left something to be desired. In the future, such incidents should probably not

be investigated by the Ministry of the Interior but should be subject to external control through a judicial inquiry. Also, the document the delegation had said it would make available upon request should automatically have been made available to the Committee, and the Committee should be kept apprised of any further developments in the next report. His overall impression was that the Czech Republic was generally on the right track.

34. Mr. EL MASRY said that he would be interested in having fuller information on the Press Act, which had apparently been amended in 1999 to place greater restrictions on journalists.

35. The issue of racism seemed to bear some connection to education. It was unlikely that all the Roma children in special schools attended them by choice, and indeed there had been allegations that some were forced to do so. Moreover, the sheer numbers - 80 per cent - of Roma children in schools for the retarded would imply that the Government had a policy of sending them there.

36. He wished to know whether the Government accepted the recommendations made in the CPT report regarding the reading of their rights to suspects by the police.

37. Mr. SOMOL (Czech Republic) said that the education of Roma children was a very sensitive issue in the Czech Republic. It was hard to explain why the Roma were not interested in receiving an education in their own language, but it was a fact. On the other hand, it was really not the case that their attendance in special schools was the result of a deliberate policy; the problem was rather the reluctance of parents to transfer Roma children in special schools to regular schools, where the Government had reserved places for them. There was no intention on the part of the Government to segregate Roma children.

38. He assured the Committee that it would receive written replies to questions that had not been answered, and that his Government would take the Committee's recommendations very seriously and act to address the Committee's concerns.

39. The CHAIRMAN thanked the delegation for responding to the Committee's questions in such a focused manner.

40. The delegation of the Czech Republic withdrew.

ORGANIZATIONAL AND OTHER MATTERS (continued)

41. The CHAIRMAN said that document A/CONF.189/PC.2/17, containing an account of the Committee's contribution to the preparations for the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, had just been issued in all languages. He recalled that the document's unavailability had been deplored by Ms. Gaer at a previous meeting.

The public part of the meeting rose at 4.45 p.m.

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Distr.
GENERAL

CAT/C/SR.470
27 June 2001

ENGLISH
Original: FRENCH

COMMITTEE AGAINST TORTURE

Twenty-sixth session

SUMMARY RECORD OF THE FIRST PART (PUBLIC)* OF THE 470TH MEETING

Held at the Palais Wilson, Geneva,
on Wednesday, 9 May 2001, at 10 a.m.

Chairman: Mr. BURNS

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CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (continued)

Initial report of Kazakhstan

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GE.01-41984 (E) 250601 270601

The meeting was called to order at 10.05 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (agenda item 4) (continued)

Initial report of Kazakhstan (CAT/C/47/Add.1)

1. At the invitation of the Chairman, Mr. Abdildin, Mr. Rogov, Mr. Danenov and Mr. Akhmetov (Kazakhstan) took places at the Committee table.

2. Mr. ABDILDIN (Kazakhstan) said that the initial report of his country had been prepared jointly by the President's Human Rights Commission, the Ministries of Justice and the Interior, the Office of the Procurator-General and the National Security Committee.

3. Kazakhstan had embarked upon the path to democracy, promulgating a whole set of legislative texts in recent years to protect human rights, including the 1995 Constitution, which contained 30 articles devoted to fundamental civil rights, the 1997 Criminal Code, the 1997 Code of Criminal Procedure, the 1998 Code for the Execution of Criminal Penalties, all three of which made acts of torture committed on Kazakh territory punishable, the Act on the pre-trial detention of suspects and accused persons, the Act on the protection of parties to a criminal trial, the order creating a cross-institutional commission to reform the prison system and the decree of the plenary Supreme Court of July 1999 on compensation for victims of offences committed by officials of the public administration responsible for the conduct of criminal proceedings. Since becoming independent 10 years previously, Kazakhstan had also ratified more than 20 international human rights instruments, which had been incorporated into domestic law.

4. Legal protection against torture was ensured by independent courts, whose activities were subject only to the Constitution and the law. A new constitutional law on the organization of the magistracy and the status of judges had entered into force in December 2000, guaranteeing the independence of the judiciary from the legislative and executive branches.

5. The Constitution, the Code of Criminal Procedure and the 1997 Act on the activities of lawyers offered protection against the risk of torture by ensuring that every arrested person had the right to see a lawyer without delay and to be visited by a family member. The Office of the Procurator was also required to monitor respect for human rights on the part of the investigative bodies, the administrative services responsible for the enforcement of sentences and the prison administration.

6. In accordance with the Constitution and the international obligations entered into by Kazakhstan, the Parliament had decided to shift responsibility for the prisons from the Ministry of the Interior to the Ministry of Justice. Only the pre-trial detention centres (IVS) and the detention centres for detainees awaiting judgment (SIZO) were still under the authority of the Ministry of the Interior, because the transfer of power to the Ministry of Justice was taking place in stages. A department for the administration of pre-trial detention centres (IVS and SIZO) had been set up in the Ministry of the Interior to take the necessary measures to improve detention conditions and defend human rights.

7. Concerning education in the field of human rights, training seminars and courses for prison and law enforcement staff were regularly held with the help of UNDP and the Office of the High Commissioner for Human Rights.

8. As Kazakh legislation had made torture an offence, confessions obtained by such means could not be used as evidence in a trial. Moreover, under criminal law, anyone who committed an act of torture was liable, even if the country was in a state of war. A bill to establish the office of ombudsman was currently being examined, notably by experts from the Organization for Security and Cooperation in Europe. If adopted, it would help ensure protection against torture. In closing, he pointed out that as Kazakhstan was in transition to democracy, much remained to be done in the area of human rights, but his Government was genuinely determined to move ahead on that path.

9. Mr. ROGOV (Kazakhstan) noted that the initial country report had been prepared in cooperation with non-governmental organizations and that all their proposals and comments were reflected therein.

10. The new Criminal Code in force since 1998 contained a whole set of provisions aimed at protecting the right to life and health of arrested persons and entitled victims of ill-treatment and acts of torture to receive compensation from the State. As already alluded to by Mr. Abdildin, anyone deprived of liberty had the right to the assistance of a lawyer upon arrest. Witnesses who so wished could decline to testify other than in the presence of their lawyer; the Constitution provided that no one could be forced to bear witness against himself, his spouse or his family.

11. Special attention was given in criminal legislation to norms relating to coercive measures taken prior to trial. Anyone suspected of an offence and deprived of liberty had the right to inform his family in the first 12 hours of detention. A suspect must be presented with an arrest warrant within 72 hours of detention or else be released immediately. Everyone had the right to appeal against an extension of detention as well as any decision by the investigating judge and the procurator supervising the proceedings. Particular attention was given to ensuring respect for the rights and freedoms of citizens lacking legal capacity, minors and persons not responsible for their actions.

12. As for the Code of Criminal Procedure, it made provision for a set of mechanisms to monitor judicial proceedings so as to prevent the use of illegal methods. For example, provisions relating to establishing the facts entitled all parties to a trial to demand that the various stages of the investigation be recorded on cassette or videocassette. In order to meet new needs in the legal sphere, a new type of evaluation had been instituted in 1999: a psychological appraisal, which used video and sometimes voice recordings to determine a person's mental state at different times during the proceedings.

13. In January 2001, the Kazakh Government had adopted a programme to improve the material and technical infrastructure of the entire prison system. Since 1998, Kazakh prisons had also actively cooperated with international humanitarian organizations. Between 1998 and 2000,

together with an organization involved in prison reform and a Dutch association working to combat tuberculosis, a health-care programme for detainees with that illness had been launched in the prisons of the Pavlodarsk region. Prison staff had also attended training courses offered by international experts who had cited the example of Polish prisons as a model.

14. A five-year project to reform prisons, train prison administration instructors in the area of human rights and work on strategic planning had begun in 2000.

15. It was also planned to create a department of justice for minors and fix norms to ensure its effectiveness. In conformity with the 1998 Constitution, trials by jury were to be introduced in the near future, and judges would be required to specialize in various fields. Moreover, Kazakhstan intended to ratify the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights and its optional protocols, as well as the Rome Statute of the International Criminal Court.

16. Mr. YAKOVLEV (Alternate Country Rapporteur), noting that he and Ms. Gaer, the Country Rapporteur, had decided that he would take the floor first, focused his remarks on the first part of the Convention. He welcomed the report and the oral introduction, which showed that Kazakhstan had taken concrete measures to exclude any risk of the use of torture in its police and prison systems. But it was a young republic, and the past continued to have an impact.

17. The definition of torture in Kazakhstan's Criminal Code was not entirely in conformity with the one in article 1 of the Convention. The wording of the Criminal Code did not highlight the specific nature of torture and did not show how such violence differed from other forms of assault. One of the distinctive features of the Convention's definition of torture, namely the reference to public officials as perpetrators, did not appear in Kazakhstan's legislation. The means used to obtain a confession were important, but there were also other aspects, such as punishment and discrimination, which the definition must include without fail. It should also be stressed that mental torture could have even more disastrous and lasting effects than physical violence. Thus, the State party was encouraged to review its definition of torture so that acts of violence associated with that practice were not confused with other forms of ill-treatment. That would also enable victims to demand the compensation to which they were entitled.

18. He was pleased to note that Kazakh legislation provided for the possibility of calling upon the services of a lawyer upon arrest. That was a very important guarantee, because the first hours of detention were decisive. It also enabled the State to protect itself against false allegations of torture.

19. Although legislation entitled suspects to be represented by a lawyer, was that right always respected in reality? What were the functions of the recently created Human Rights Commission and the type of situations and complaints that it examined? He also called attention to the case of a Chinese national extradited to China although he had been at risk of being tortured there. He wondered whether that decision was in conformity with the provisions of article 3 of the Convention. In keeping with article 15 of the Convention, article 77, paragraph 3 (9), of the Constitution stipulated that evidence obtained by illegal means had no legal effect. He referred, however, to a case brought before a court in eastern Kazakhstan

which had accepted evidence of demonstrated inadmissibility, in flagrant violation of the law. A number of countries had witnessed a change in the role of the Office of the Procurator, which, while remaining the authority responsible for the accusation, had taken on the new function of verifying the legality of court decisions. Was that also the case in Kazakhstan? Perhaps the authorities could give thought to all those questions, especially since Kazakhstan had resolutely embarked upon the path to democracy, and given that measures taken to that end should be based on a firm political commitment, a reform of the judiciary, and cultural values that promoted human rights.

20. Ms. GAER (Country Rapporteur) also welcomed the excellent report submitted by the State party and the updated information communicated by the delegation in its oral introduction. She stressed the crucial importance for the Committee of the incorporation into national law of a definition of torture consistent with the one given in article 1 of the Convention. Although torture was defined in the Commentary on the Criminal Code of the Republic of Kazakhstan (para. 13 of the report), no reference had been made to the purposes for which it was used, as set out in article 1 of the Convention. Paragraph 94 of the report recognized the absence until recently of specific training programmes for law enforcement officials and medical personnel aimed at preventing the use of torture. Since then, efforts had been directed at certain categories of civil servants, notably prison staff, but they continued to be very uncoordinated. The adoption of a comprehensive and precise definition of torture would make it possible to devise targeted courses which would leave no possible doubt as to the nature of the acts condemned.

21. She then asked how the authorities gave effect to article 11 of the Convention. Information according to which authority for the prisons had been shifted from the Ministry of the Interior to the Ministry of Justice was interesting, but which services were responsible for monitoring the conditions under which persons were deprived of their liberty (in prisons, detention centres for minors and psychiatric institutions)? Was such monitoring conducted with all the necessary openness? What was the reason for the high percentage of cases of tuberculosis among detainees, the cases of self-mutilation noted in two prisons and those reported by the International Helsinki Federation for Human Rights as well as the physical and sexual violence inflicted on detainees? Had measures been taken to separate refugees and asylum-seekers from common-law criminals? In that connection, she cited the case of Ms. Alebacheu, an Ethiopian national who had come to Kazakhstan for professional reasons and had been detained for 10 days on suspicion of being HIV-positive. Kazakh law provided for the expulsion of persons who were HIV-positive, not for their detention. Had instructions been given to prevent a repetition of such abuses? Did the victims receive compensation? Police staff performance was evaluated, inter alia, as a function of the number of cases elucidated; that was said to be one of the main causes of the use of violence and torture by police officers. Was it planned to establish other criteria to judge their professional conduct? Concerning article 12 of the Convention, she stressed that the more a State party moved ahead with setting up an independent and impartial judiciary, the easier it would be for it to comply with its obligations under that provision. The role of the Office of the Procurator clearly emerged in paragraph 120 of the report, which stated that a legislative solution was being sought for vesting the Procurator with procedural rights to conduct criminal proceedings which he himself had initiated. Who had undertaken that initiative, and had it been successful? In view of the problem set out in paragraph 121 of the report, it would be desirable for independent bodies to monitor investigations to ensure that they were conducted impartially and conscientiously. Did the authorities intend to publicize a decree

on the procedure to be followed in order to help civil servants who were investigating complaints discharge their duties in compliance with the law? Did Kazakhstan plan to publish statistics on acts of torture committed? Would the creation of the office of ombudsman and changes in the functioning of the courts strengthen the independence of the judiciary? Regarding article 13 of the Convention, she sought details on the future committee to receive complaints from persons alleging that they had been tortured. In connection with the numerous allegations of police abuse, she referred to the case of Ms. Ignatushkina, concerning whom vital medical evidence had been illegally confiscated during an investigation, and that of Mr. Martinov who, suspected of theft and drug trafficking, had had his jaw broken and had been threatened with the inoculation of germs carrying venereal disease, before being released for lack of evidence. How did the authorities intend to put a stop to such abuses? In that connection, did the Kazakh Government plan to make the declaration under article 22 of the Convention?

22. Turning to the right of all victims of torture to redress and to fair and adequate compensation (art. 14 of the Convention), she sought information on the outcome of the prosecution of the perpetrators of the offences referred to in paragraphs 145 to 151 of the report and on the compensation granted to the many victims. She would also like to know why the perpetrators of the violations cited in paragraph 149 of the report had not been prosecuted under article 347, paragraph 2, of the Criminal Code (use of coercion to obtain confessions). On the subject of article 15 of the Convention (inadmissibility of a statement obtained under torture), she sought further details on the new regulations authorizing a detainee to see a physician or a lawyer empowered to receive his statement within 72 hours of being taken into custody. Was the information always used in the proceedings? As for article 16 of the Convention (acts of cruel, inhuman or degrading treatment or punishment), she sought more detailed information on medical care for young detainees and especially on the disciplinary sanctions to which they were subjected. It emerged from a 60-minute video on the question that such young persons were the victims of acts of violence. She asked in particular about a man called Prokopenko, who was said to have died following ill-treatment in prison and whose death had not been the subject of any inquiry. Would it be possible to exhume the body and have it examined by an expert to determine the causes of death? She looked forward to a constructive dialogue with the delegation on all those points.

23. Mr. MAVROMMATIS commended the State party on the quality of its initial report. However, he encouraged it to take urgent measures to reform the entire criminal justice system, in particular the procedure for investigating allegations of torture. He would like to know why Kazakhstan had not made a statement on succession to the commitments undertaken by the former USSR with regard to the Convention and other international instruments. He stressed the importance of the definition of torture and called the attention of the members of the delegation to the efforts which the Kazakh authorities must make to combat that phenomenon and ensure that existing legislation in that area was enforced. Guaranteeing the independence and effectiveness of inquiries into any allegations of acts of ill-treatment or torture was crucial. Like Ms. Gaer, he sought details on the Prokopenko case, as well as that of another young man called Veritchak, the investigation on the latter's case apparently having been discontinued for lack of compelling evidence. He would also like to have some information on the new provisions concerning evidence.

24. Mr. RASMUSSEN said that he had been appalled by what he had seen in the documentary "Lager 155" (Camp 155), which described the detention conditions of young detainees and in particular the inhuman way they were treated by the prison authorities. He was not surprised that 80 per cent of those young people mutilated themselves or remained criminal once released. While welcoming the adoption of a five-year plan to combat tuberculosis, he called upon the Kazakh authorities to give priority attention to the disastrous conditions and arbitrary acts that reigned in the detention centres and take the necessary measures to put an end to that situation. Consideration should also be given to reducing the length of custody; the 72-hour period was too long and resulted in too much police abuse, as corroborated in many allegations by Amnesty International. Lastly, he sought more detailed information on isolation cells and incommunicado detention.

25. Mr. CAMARA said he was also pleased about the high level of the delegation; there was thus reason to expect illuminating replies to what at times were very technical questions posed by the Committee. For his part, he wondered about the wording of paragraph 30 of the report, which did not seem very clear. In any case, article 2, paragraph 2, of the Convention did not permit any derogations from the prohibition on torture, even in exceptional circumstances. The Committee had focused in particular on paragraphs 120 to 122 of the report, which dealt with the role of the prosecution. Personally, he was not disturbed about the powers of the Office of the Procurator, because the rules for the organization and functioning of the prosecution were adequate. He would like to find out more about the statutory regime applicable to procurators in Kazakhstan: career, conditions for appointment, disciplinary regime and operational relations between the various members of the Office of the Procurator-General. Above all, he would like to know whether the Procurator-General and his staff were appointed by a Supreme Council of Justice, by the Government or by the Parliament and, more generally, how the independence of the prosecution was ensured: was its status in conformity with the 1990 United Nations Guidelines on the Role of Prosecutors? It was in the details of the rules applied that the independence of the judiciary and the objectivity of the Office of the Procurator were ensured.

26. Mr. HENRIQUES GASPAR, also referring to paragraphs 120 to 122 of the report, asked what actual powers the prosecution had to supervise investigations, notably for taking action on complaints of abuse of authority, ill-treatment and torture. It seemed that the law of 6 September 1999 did not grant the prosecution sufficient independence, because the rule according to which the police must not take part in investigations concerning police officers had not been complied with. Did the Kazakh authorities plan to take any measures to ensure that the prosecution could investigate, in complete independence, acts committed by police officers?

27. Mr. Rasmussen had asked a very important question on the length of custody, given that in other countries, it was usually 48 hours, sometimes but not always with the possibility of an extension to 72 hours in very exceptional circumstances. Likewise, the usual rule was that a suspect must be brought before a judge as quickly as possible and that the length of pre-trial detention should be as short as possible. But it emerged from paragraph 74 of the report that Kazakhstan departed from that principle and that the procurator was empowered to decide on detention, although that should be the prerogative of another authority, such as a judge. The fact that it was the procurator who decided to prolong pre-trial detention did not offer all the necessary guarantees.

28. According to paragraph 78 of the report, the staff of the place of detention ended visits if an attempt was made to provide the detainee with information that might hamper the proceedings or be used in the commission of an offence. Did that mean that the staff at the place of detention listened in on the conversations? Although there was nothing wrong with ensuring that no article or substance was given to the detainee during visits, listening in on conversations was much more questionable. In closing, he asked for more information on how many detainees were awaiting trial and how many prisoners were serving their sentences in Kazakh prisons.

29. The CHAIRMAN said that he wanted to raise the question of a group of Uighurs who, according to Amnesty International, had been returned to China; how did the Kazakh authorities reconcile that action with the obligations assumed under article 3 of the Convention, given that, in the Committee's opinion, there could be no exception to the provisions of that article? It also seemed that, prior to being returned, those persons had been detained in so-called "investigation isolation prisons": that was perhaps just a translation problem, but it would be useful to have details on the nature of such prisons and on the rules governing the imprisonment of persons in those places of detention.

30. In his introduction, Mr. Rogov had said that Kazakhstan was considering the creation of a system for making audiovisual recordings of interrogations. Such a measure would place the State party in the very select circle of the most advanced countries in that area; it would be interesting to have confirmation of that plan.

31. He thanked the delegation for introducing a very interesting and comprehensive report and invited it to return at a later meeting to answer the Committee's questions.

32. Mr. ABDILDIN (Kazakhstan) thanked the Committee for its attention and the competent manner in which it had considered the country report. Kazakhstan would derive enormous benefit from the Committee's recommendations.

33. The Kazakh delegation withdrew.

The first part (public) of the meeting rose at 12.25 p.m.

UNITED NATIONS

CAT

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Distr.
GENERAL

CAT/C/SR.471
21 May 2001

Original: ENGLISH

COMMITTEE AGAINST TORTURE

Twenty-sixth session

SUMMARY RECORD OF THE FIRST PART (PUBLIC)* OF THE 471st MEETING

Held at the Palais Wilson, Geneva,
on Wednesday, 9 May 2001, at 3 p.m.

Chairman: Mr. BURNS

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* The summary record of the second part (closed) of the meeting appears as document CAT/C/SR.471/Add.1.

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GE.01-42020 (E) 210501

The meeting was called to order at 3 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (agenda item 4) (continued)

Conclusions and recommendations concerning the third periodic report of Greece (continued) (CAT/C/39/Add.3; CAT/C/XXVI/Concl.2/Rev.1)

1. At the invitation of the Chairman, the delegation of Greece took places at the Committee table.

2. The CHAIRMAN read out the conclusions and recommendations of the Committee on the third periodic report of Greece (CAT/C/39/Add.3) contained in document CAT/C/XXVI/Concl.2/Rev.1.

3. Ms. GOUNARI (Greece) thanked the Committee for its efforts and said that her Government would give the Committee's recommendations its full attention in implementing the provisions of the Convention.

4. The delegation of Greece withdrew.

The meeting was suspended at 3.10 p.m. and resumed at 3.40 p.m.

Initial report of Brazil (continued) (CAT/C/9/Add.16)

5. At the invitation of the Chairman, the members of the delegation of Brazil took places at the Committee table.

6. Mr. PINTA GAMA (Brazil) thanked the Committee for its positive comments and said that the candour with which the report discussed the serious problems relating to torture in Brazil reflected the expectations of Brazilian society as well as public policy.

7. Turning to the observations made by Mr. Silva Henriques Gaspar, he said, with regard to article 2 of the Convention, that provisional detention, which must be ordered by a judge, lasted for 81 days, during which time the investigation took place. However, such detention could be extended beyond 81 days by the courts where necessary - for example in difficult cases, in cases involving many persons, if the accused's attorney seemed to be deliberately delaying the proceeding or in the event of force majeure. Detainees had the right to communicate with their families and with an attorney, although a judge could order a detainee held incommunicado for up to three days; such an order did not extend to the detainee's attorney.

8. The National Programme on Human Rights, launched in 1996, had been extremely important in raising awareness of human rights and serving as a catalyst for public policy, although not all of its objectives had been attained. A revised programme would soon be launched, containing new goals and addressing issues arising out of weaknesses in the first programme. The latter had dealt mostly with civil and political rights, whereas the new version

placed greater emphasis on economic, social and cultural rights. Many of the laws enacted during the previous five years had reflected the programme's objectives, including for example, the Torture Act.

9. With regard to article 3 of the Convention, he said that Brazilian refugee law reflected the 1951 Convention relating to the Status of Refugees and the definitions contained in the Protocol thereto. The National Commission for Refugees (CONARE) included representatives of the Ministries of Justice, Foreign Affairs, Labour, Health and Education, the Federal Police, civil society and the Office of the United Nations High Commissioner for Refugees (UNHCR). Refugee status could be claimed at any Federal Police office, and the claimant was interviewed by CONARE staff as well as representatives of Caritas Brasileira and the Brazilian Bar Association. The UNHCR representative in Brazil could be requested to provide information on the country of origin and an agreement for that purpose had been signed with the Brazilian Institute of International Relations. Another agreement had also been signed between Caritas Brasileira and UNHCR for the integration of refugees, who had access to the public health and education systems and could request reunification with their families if the family was in Brazil.

10. With regard to article 4 of the Convention, he said that the Government interpreted torture under the Torture Act to mean any act that might cause physical or mental suffering or be construed as violent or threatening. Since the Torture Act was relatively recent, there was no real jurisprudence on its interpretation by the courts, but judges were encouraged to apply that broad definition. The Act also covered all perpetrators envisaged by the Convention, and any public agent found guilty of torture would be subject to more severe penalties than private individuals. Between 1997 and April 2001, 258 charges had been brought under the Act, 56 cases were still being investigated, 16 cases had come to trial and there had been several convictions. As the Torture Act had only been promulgated in 1997 and criminal proceedings required four to five years on average, it was anticipated that the number of convictions would rise as trials were concluded.

11. The Government recognized the need to sensitize prosecutors and judges to the need to apply the Torture Act in order to combat impunity at both the State and Federal District levels, and had made that a priority of the national campaign against torture to be launched in June 2001. Public Prosecutors must play a greater role in police investigations, and enhancing that role was one of the priorities of the National Programme on Human Rights. A bill to bring human rights crimes, including torture, under federal jurisdiction as part of the proposed judicial reforms had been under consideration in Congress for a number of years. The bill would allow the Attorney-General to request the Superior Court of Justice to transfer jurisdiction for crimes involving serious human rights violations to the federal courts at any moment of an inquiry or proceeding, with a view to ensuring Brazil's compliance with its international human rights treaty obligations.

12. With regard to article 5 of the Convention, he said that the provisions of the Torture Act could also be applied to crimes of torture committed outside Brazil where the victim was a Brazilian citizen or the perpetrator was within an area under Brazilian jurisdiction. The Brazilian Penal Code also recognized the principle of extraterritoriality and allowed for the perpetrator of a crime under Brazilian law committed outside Brazilian territory to be prosecuted in Brazil.

13. Turning to articles 6 to 9 of the Convention, he said that Brazil, as a party to the Vienna Convention on Consular Relations, was bound to allow a detainee to communicate immediately with the nearest appropriate representative of the State of which he was a national. Although the Constitution forbade the extradition of Brazilian nationals, they could be tried in Brazil for crimes recognized as such under Brazilian law even if those crimes had been perpetrated abroad, just as foreigners in Brazil could be tried in Brazil for crimes committed abroad (art. 7). Brazil had signed judicial cooperation agreements on the exchange of information with several countries, which could be invoked in cases of torture committed abroad.

14. With regard to article 10 of the Convention, he said that training and capacity-building would be one of the key elements of the national campaign against torture. Training seminars would be organized for the legal community; in addition, human rights courses for the police forces would include instruction in modern investigative techniques as a substitute for torture. Torture prevention would be discussed during the forthcoming mission of the United Nations High Commissioner for Human Rights to Brazil, and her assistance and guidance would be sought in organizing those courses. Despite the serious public security situation, efforts to combat criminality must be compatible with human rights concerns. In fact, the national public security plan and the National Programme on Human Rights were to some extent complementary, and some of the national public security budget was being used to finance human rights-related social projects of a preventive nature.

15. With regard to article 11 of the Convention, he said that the current prison population was 223,000 persons held in 862 detention facilities, including 161,000 persons in penitentiaries and 62,000 in other facilities. Of the total number of detainees, 150,000 had already been convicted and 74,000 were in provisional detention; 214,000 were men and fewer than 10,000 women. Over 40 per cent of Brazil's prison population was concentrated in the State of São Paulo, where the State Government, supported by the Ministry of Justice, was planning to build new remand facilities to allow 24,000 detainees to be transferred from police station cells, many of which - fortunately - were being closed down. Other steps taken to reduce prison overcrowding and ensure that all detainees were given the guarantees of article 5 of the Constitution included the establishment of alternative sentencing centres, collective court proceedings aimed at eliminating the backlog in criminal cases and the creation of special courts to deal with drug addicts.

16. With regard to articles 12 and 13 of the Convention, and specifically the machinery for outside investigation of police abuses, the expansion of the police ombudsman offices should help to reduce impunity. Currently there were police ombudsmen in 10 Brazilian states, and there were plans to establish them in the remaining 16 states and the Federal District.

17. In cases involving torture, the police officers involved were provisionally suspended, until the administrative legal requirements demanded by due process were met. However, the Brazilian legal system also provided for appeals that would allow the accused to resume their functions until a decision on the appeal was taken.

18. Police inquiries must be in compliance with the Code of Criminal Procedure. The National Forum of Police Ombudsmen had proposed a bill on the unification of the military and civil police forces that contained a provision abolishing police inquiries and transferring all powers of investigation to the Public Prosecutor's Office.

19. In connection with article 14 of the Convention, Brazilian law allowed any citizen who had been a victim of torture or other violation of civil and political rights by public officials to file a civil action seeking compensation. Under Act No. 9140/95, compensation had been granted to the families of those who had died or disappeared during the military regime, including cases where the victims had been previously subjected to torture for political reasons. Regardless of the outcome of any civil proceedings brought by individuals, the Executive Branch had the discretionary power to propose compensation bills to Congress. Since only the Federal Government was signatory to multilateral treaties, however, and since individual states had their own investigation and prosecution authorities, compensation proceedings brought against state Governments were complex. In an attempt to address the issue the National Secretariat for Human Rights had appointed a group of jurists to discuss the possible establishment of a legal mechanism through which international decisions involving state liability could be enforced and the Federal Government could be reimbursed for compensation paid to victims.

20. The two cases of compensation mentioned in the report (paras. 170-171) were not exceptions but rather part of a trend that had been given impetus by Brazil's recognition of the compulsory jurisdiction of the Inter-American Court of Human Rights in 1998 and the negotiation of amicable settlements with the Inter-American Commission on Human Rights. In addition to the case mentioned in paragraph 170 of the report, there were six amicable settlements under negotiation for cases of police violence in the States of Rio de Janeiro and Pernambuco and one case of forced labour in the State of Pará. His Government was also giving serious consideration to recognizing the competence of the Committee under article 22 of the Convention. The question of the rehabilitation of torture victims still needed to be addressed by the Government in cooperation with international and non-governmental organizations (NGOs) having expertise in the field.

21. Turning to article 15 of the Convention, he said that any confession made during a police inquiry or at a subsequent stage was valid only if confirmed by both a judge and the accused, in accordance with article 195 of the Code of Criminal Procedure; and any evidence obtained through illegal methods, including torture, was invalid under article 5 of the Constitution.

22. Regarding article 16, he said that Brazil was undergoing a public security crisis in which the punishment of even petty crimes tended to be more severe, which partly explained the high number of detainees and the prison overcrowding. The excessive duration of judicial proceedings, another problem, should be minimized when the constitutional amendment on the reform of the judiciary currently under consideration in Congress was adopted.

23. The increase in the female prison population in the last 20 years was due mainly to the involvement of women in drug smuggling. The national penitentiary system had not been prepared for such an influx, and many female inmates had been incarcerated in improvised facilities. However, new women's prison facilities were being built, which were equipped for spousal visits and infant care. On the general issue of visits by relatives of inmates, the National

Secretariat for Human Rights was strongly urging that the current humiliating search system in prison facilities should be replaced by a system in which inmates alone were searched after visits and metal detectors were installed in all prisons.

24. It was unfortunately true that women, prisoners suffering from human immunodeficiency virus and acquired immune deficiency syndrome (HIV/AIDS), homosexuals, the mentally and physically impaired, transvestites and rapists suffered discrimination in the criminal justice system. To tackle the incidence of HIV/AIDS in prison facilities, largely the result of needle-sharing among drug users, the Federal Government was fostering prevention, diagnosis and assistance services to HIV/AIDS patients. In addition, the Ministries of Health and Justice were carrying out joint programmes to train prison guards and raise prisoner awareness of the pandemic and ways of preventing it. Most prison facilities distributed contraceptives to detainees before spousal visits, and the entire prison population had access to HIV medication through the public health system.

25. The lack of medical assistance in prisons was a major problem, and the Government had the duty to overcome the reluctance of doctors to serve in prisons. The Ministry of Justice was considering a cooperative agreement with medical schools, which would provide the necessary services to detainees. The Public Prosecutor's Office was currently working with the Ministry of Health to equip all prisons with basic medical units. When overcrowding ceased to be a problem, a more permanent solution would be found. In the meantime, doctors who refused to assist prisoners or to certify the practice of torture were punishable by the regional or national medical councils, the bodies that certified members of the medical profession.

26. The Federal Government had officially condemned torture and as a matter of policy had dismissed any public officials accused of committing torture during the military regime, and it would continue to do so. The national campaign against torture would stress the fact that torturers should be expelled also from the police and other State agencies whenever accusations were deemed plausible. Torture involving military personnel was covered by the Torture Act. He was not aware of all the cases of alleged torture in the military raised by the NGO Tortura Nunca Mais; to his knowledge, the first case involving torture in a military facility in Rio de Janeiro had just been brought to trial.

27. The national campaign against torture would emphasize prevention through training of the legal community, the police and prison guards, increased oversight of places of detention and a media campaign to sensitize and mobilize all sectors of society against torture.

28. With regard to the title "Federal Prosecutor for Citizens' Rights", citizenship was an inclusive concept in Brazil, embracing socially disadvantaged and marginalized groups, and the Prosecutor protected the rights of all, regardless of national origin. He or she was appointed by the Attorney-General from among the Deputy Attorneys-General and had representatives in every state.

29. A national campaign was being launched to change the tendency to associate the crime of torture solely with abuses committed under the military regime. It was hoped to involve civil society in the fight against torture by drawing attention to acts of torture committed against prisoners and suspected criminals.

30. The delay in the submission of Brazil's initial report to the Committee was due to the fact that the Government had preferred to wait until the Torture Act had been adopted and implemented for a few years before submitting the report. Subsequent reports would keep to the proper schedule. Also, his Government did not have an expert group responsible for the preparation of reports to treaty bodies, and delays were the price it paid for its extensive ratification of international and regional instruments. It could probably benefit from the courses provided by international organizations on the preparation of such reports, although Brazil's initial report to the Committee had not been produced simply by bureaucrats but by an independent official human rights body. The Government would also seriously consider the suggestion that formal consultations should be held with appropriate NGOs when preparing reports. The Centre for Studies on Violence at the University of São Paulo, an independent think tank, had collaborated with the National Secretariat for Human Rights in preparing Brazil's initial report to the Committee.

31. Paragraph 135 of the report should be amended to read "Another problem of the Brazilian prison system was the 58,000 convicted prisoners who were serving sentences in police stations and public jails."

32. The statute of limitations in respect of the crimes of torture and murder in the Penal Code was 12 years and 20 years respectively. The issue had never been addressed by the Inter-American Court of Human Rights, and no cases concerning Brazil had been brought before the Court thus far.

33. On the question of the 1979 Amnesty Law, he noted that crimes of torture committed before 1989 could not be prosecuted in Brazil. The authorities were aware of the recommendations of the Inter-American Commission on Human Rights regarding the Uruguayan Amnesty Law. Moreover, the Commission had recently declared the case of the Araguaia guerrilla movement, which concerned events in the 1970s, admissible. The 1995 law concerning persons who had disappeared for political reasons stated that its implementation was to be governed by the principle of reconciliation and national peacemaking laid down in the Amnesty Law.

34. Mr. SILVA HENRIQUES GASPAR (Country Rapporteur) said he agreed with the delegation that the words "violence or serious threats" used in the definition of the crime of torture in the Brazilian Torture Act could refer either to physical or to mental violence. He was somewhat surprised, however, to hear that the authorities were seeking to have such an interpretation incorporated in the relevant jurisprudence: surely that was a matter for the judiciary.

35. He would be interested to hear whether a final verdict nad been returned in the 16 cases concerning acts of torture mentioned by the delegation and whether the accused were all law enforcement officers.

36. Mr. GONZÁLEZ POBLETE (Alternate Country Rapporteur), noting that the maximum period of pre-trial detention was 81 days, asked whether that included time spent in police custody. How long could a person be held by the police before being brought before a judge?

37. He would welcome additional information about the police ombudsmen who were involved in investigating alleged cases of torture. Were they independent of the police force and capable of carrying out quick, thorough and impartial investigations?

38. Ms. GAER inquired about the system for monitoring inter-prisoner violence, including sexual violence.

39. She understood that the authorities were not familiar with the allegations of torture in the military that she had mentioned the previous day. She would be pleased to share that information with the delegation and to provide it with the list of 444 alleged torturers from the period of military rule to which the Special Rapporteur on torture had referred.

40. Mr. PINTA GAMA (Brazil) said that the effort by the authorities to influence jurisprudence regarding the definition of torture had taken the form of information campaigns, seminars, publications and other initiatives designed to change attitudes and ensure more stringent application of the law.

41. Various stages had been reached in the 16 legal proceedings concerning acts of torture. In the State of Alagoas one person had been convicted and an appeal procedure was under way. In the State of Bahia there had been one conviction. In the State of Espírito Santo the accused had been acquitted. In the State of Goiás there had been one conviction, in the State of Mato Grosso do Sul three convictions, in the State of Paraíba two convictions, in the State of Paraná two convictions and in the State of São Paulo one conviction. Legal proceedings were still under way in the other cases. The small number of cases was due to the fact that the law invoked had only recently been enacted.

42. The maximum period of pre-trial detention of 81 days included time spent in police custody.

43. The police ombudsmen were completely independent of the police force. The National Secretariat for Human Rights had therefore decided to support the National Forum of Police Ombudsmen, which also served as an advisory body on policy regarding, for example, the fight against violence. It was hoped in time to extend the ombudsman system to all states in the country.

44. He was unable to describe in detail how inter-prisoner violence was dealt with. Responsibility lay, in principle, with the prison authorities and some monitoring was undertaken by civil society through NGOs.

45. He had heard of the allegations of torture in the military. Legal action had certainly been taken in two cases but he was not sure about the others. He would be pleased to receive the list of 400 alleged torturers mentioned by Ms. Gaer.

The public part of the meeting rose at 5.10 p.m.